IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No._116 of 1997.

Judgement reserved on: 8.11.2007

Date of decision: 24.12.2007

State of H.P. **…….Appellant**

Vs.

Attru Ram and another **…. Respondents.**

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] No

For the Appellant : **Mr. M.S. Chandel, Advocate General with Mr. M.L. Chauhan, Addl. Advocate General.**

For the Respondents : **Mr. K.D. Sood, Advocate.**

Kuldip Singh, Judge.

This appeal has been directed against the judgment, decree dated 10.1.1997 passed by learned Addl. District Judge, Solan in Civil Appeal No.13-NS/13 of 1990, partly modifying the judgment, decree dated 1.5.1990 passed by learned Sub Judge Ist Class, Arki.

2. The facts of the case as emerge from the plaint are that Sudama Ram father of respondents filed a suit for declaration with consequential relief of injunction to the effect that he was owner in possession of portion of land bearing Khasra No.30 shown as 30/1 measuring 7-10 bighas, situate in village Bhatka and portion of khasra

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Whether the reporters of the local papers may be allowed to see the Judgment?Yes

No.411/382 shown as khasra No.411/382/1 measuring 1-8 bigha, situate in Chak Shelli, Pargana Dwari Junal, Tehsil Arki, District Solan, by way of adverse possession, in case the suit land is not treated as grant of nautor. The dispossession of Sudama Ram shown in the revenue record on 22.7.1988 is illegal, arbitrary. Infact the suit land remained in his possession, he prayed consequential relief of permanent injunction also.

3. The further case of Sudama Ram was that on 23.1.1958 a Patta was issued to him and land comprised in khasra No.1240/1, measuring 9 bighas, situate in village Shelli was allotted to him under the grant. He was put in possession, prior to grant of Patta, land comprised in Khasra No.30/1, measuring 7-10 bighas in village Bhatka and Khasra No.411/382/1 measuring 1-8 bighas in village Shelli . The revenue department by mistake put Sudama Ram in possession of wrong area. After grant of nautor, the Consolidation of Holdings Operation took place in the area and the entire land of the village was measured and re-allotted to the agriculturists. Sudama Ram was granted land by the State in the year 1958 and since then he remained in possession of the suit land openly without interruption to the complete ouster of the State. The revenue authorities had wrongly shown Sudama in possession on land comprised in Khasra No.391 measuring 9 bighas which corresponds to khasra No.1240/1, land initially shown as allotted to Sudama Ram.

4. That Assistant Collector 2nd grade, Arki started encroachment proceedings against Sudama Ram without looking into the fact that possession of Sudama Ram had become adverse to the

State for the last more than 30 years. The Revenue Authorities could not dispossess Sudama Ram after the expiry of 30 years. The Field Kanungo had shown issue of notice of ejectment on 21.7.1988 to said Sudama Ram on papers but he was not dispossessed from the suit land. The possession of Sudama Ram had ripened into lawful title in January 1988 after completion of 30 years. Sudama Ram was not dispossessed on 22.7.1988.

5. The suit was contested by State by filing written statement in which preliminary objections of jurisdiction, maintainability, lack of notice under Section 80 CPC, no cause of action and locus standi have been taken. On merits, it has been pleaded that the possession of allotted land was delivered to Sudama Ram. It has been denied that he was put in possession of land as alleged by him. He was put in possession of Khasra No. 1240/1 which was allotted to him. Sudama Ram had encroached upon other land. Sudama Ram was not in possession of suit land as he was already ejected from the suit land. It has been denied that Sudama Ram had acquired title of the suit land by way of adverse possession. Replication was filed by Sudama Ram in which case pleaded in the plaint was reiterated and stand taken by the State in the written statement was denied.

6. The trial Court framed the following issues:-

1. *Whether the suit land was granted to the plaintiff in Nautor in the year 1958 and since then he is in possession as owner, as alleged ?..OPP*
2. *If issued No.1 is not proved in the affirmative, whether the plaintiff has become owner in possession of the suit land by way of adverse possession ?..OPP*

3. *Whether the plaintiff has failed to comply with the mandatory provision of section 80 CPC? …OPP*
4. *Whether the plaintiff has no cause of action?...OPD*
5. *Whether the suit is not maintainable in the present form?...OPD*
6. *Relief.*

The learned Sub Judge returned findings on issue No.1 in favour of Sudama Ram. In view of findings on issue No.1, issue No.2 held redundant. The trial Court on 1.5.1990 decreed the suit and held that Sudama Ram was owner in possession of land comprised in Khasra No.30/1, measuring 7-10 bighas situated in village Bhatka and Khasra No.411/382/1, measuring 1-8 bighas, situated in Chak Shelli, Pargana Dwar Junal, Tehsil Arki, Distt Solan, H.P. and the dispossession of Sudama Ram, if any, shown in the revenue record was illegal and arbitrary and restrained the State from interfering on suit land.

7. The state filed appeal against the decision dated 1.5.1990 which was dismissed by learned Addl. District Judge, Nahan Camp at Solan on 22.5.1993 by way of Civil Appeal No. 13-NS/13 of 1990. The State filed RSA No.301 of 1993 against decision dated 22.5.1993. In second appeal it was found that Sudama Ram was already dead when the matter was pending with learned Lower Appellate Court and therefore, this Court allowed RSA No.301 of 1993 and set aside judgment, decree dated 22.5.1993 and remitted the case back to learned Lower Appellate Court for decision on merit in accordance with law. After remand, learned Addl. District Judge partly allowed the appeal on 10.1.1997. The State has come up in

appeal against judgment, decree dated 10.1.1997. The appeal has been admitted on following substantial questions of law:-

> ***1.*** *Whether the Civil Court has no jurisdiction in view of the bar created under Section 163 of the H.P.Land Revenue Act**?***
>
> ***2.*** *Whether the Government is competent to eject the encroacher under Section 163 of the H.P. Land Revenue Act and to that extent Civil Court has no jurisdiction to pass restraint orders?*
>
> ***3****. That even otherwise the mis-appreciation of documentary and oral evidence itself amounts to substantial question of law?*

8. I have heard Mr. M.S. Chandel, learned Advocate General for the State and Mr. K.D. Sood, learned counsel for the respondents and gone through the records. It has been submitted on behalf of the State that it is the case of the respondents that their father Sudama Ram was put in possession of suit land whereas he was allotted by way of Nautor different land. Their further case is that they through their father have become owners of the suit land by way of adverse possession. Both the Courts below have not properly appreciated the case of the respondents and their father and have erred in giving the declaration that they are owners in possession of the suit land. It is the stand of the State that father of the respondents was evicted from the suit land and the Civil Court has no jurisdiction to look into this aspect. The Courts below have not given declaration of adverse possession in favour of respondents and

their father, nor the maintainability and jurisdiction of Civil Court to try the suit in view of proceedings under Section 163 H.P. Land Revenue Act has been decided by lower Appellate Court. The learned counsel for the respondents has supported the impugned judgment, decree.

Substantial questions of Law No.1 to 3.

9. The substantial questions of law No.1 to 3 are interconnected, therefore these are being disposed of collectively. The case of the father of the respondents in the plaint is to the effect that in the year 1958 he was allotted nautor land vide Patta Ex.PW-1/A and by virtue of this Patta land comprised in Khasra No.1240/1 measuring 9 bighas in Mauza Shelli, Tehsil Arki was allotted to him but the field staff of the appellant put him in possession of suit land comprised in Khasra No.30/1, measuring 7-10 bighas, situated in village Bhatka and Khasra No.411/382/1, measuring 1-8 bighas, situated in Chak Shelli, Pargana Dwari Junal, Tehsil Arki, District Solan. The case of the father of the respondents was further that he developed the suit land, constructed his house and treated the suit land his own land. The revenue authorities started ejectment proceedings against the father of the respondents and on papers evicted him from the suit land on 21/22.7.1988 but actually father of the respondents was never evicted from the suit land and he continued to be in possession thereof. The respondents have claimed title on the suit land by way of adverse possession as they are in possession of the suit land openly since January 1958 onwards. It is admitted case of the respondents that their father was

allotted by way of Nautor land khasra No.1240/1 , measuring 9 bighas, this fact has not been denied by the State. The question is with respect to title of respondents on khasra No.30/1 and khasra No.411/382/1. The respondents are claiming title on land comprised in these khasra numbers simply on the ground that their father was put in possession of land comprised in khasra No.30/1 and khasra No. 411/382/1 even though land comprised in khasra No.1240/1 was allotted to him by way of Nautor. Sudama was not put in possession of suit land on the basis of allotment by way of Nautor. In para-2 of the plaint Sudama has pleaded that he was put in possession, prior to grant of patta, land comprised in khasra No.30/1 and khasra No,.411/382/1. Therefore, even if the case of the respondents is taken as it is, in that case also simply on the ground that the father of the respondents was put in possession of the land comprised in khasra No.30/1 and khasra No.411/382/1, the respondents cannot acquire title on the suit land on the basis of mere possession and nothing more. As per Ex.PW-1/B, jamabandi for the year 1986-87, khasra No. 30 is owned by the State and in possession of Forest Department with local residents having rights therein. Khasra No.391 as per jamabandi Ex.PW-1/C for the year 1986-87 is owned by Sudama 2/3rd, Attru and Dhanu 1/3rd. Khasra No.411/382, as per jamabandi Ex.PW-1/D for the year 1966-67 Mauza Shelli is owned by State and in possession of Forest Department with local residents having rights therein. The Field Kanungo as per report dated 1.5.1992 found Sudama Ram in possession of land comprised in khasra No.30/1, measuring 7-16 bighas, khasra No.411/382/1

measuring 2-8 bighas which is owned by the State and Khasra No.391/1, measuring 1-3 bigha owned by Sudama Ram. The two Courts below have not decided the issue regarding adverse possession of the father of the respondents on the suit land. The Courts below without recording any finding on adverse possession of father of respondents on the suit land have declared respondents and their father owner in possession of the suit land. This finding is not sustainable in as much as the respondents and their father except for adverse possession on suit land have not put forward any other claim for acquiring title on the suit land. The trial Court held that suit is maintainable in view of findings on issues No. 1 and 3. The lower appellate Court has not recorded specific finding on maintainability and jurisdiction of Civil Court to try the suit. The finding on adverse possession is primarily a finding of fact which is to be recorded by Courts below. In the facts and circumstances of the case since both the Courts below have not recorded finding on the plea of adverse possession of the respondents on the suit land, I am of the opinion that it is in the interest of both the parties that issue of adverse possession is to be decided by lower Appellate Court and not by this Court. The decision of this Court on the plea of adverse possession will deprive either party right of appeal. The appeal is therefore, liable to be accepted and the case is to be remanded to the lower appellate Court. The substantial questions of Law No.1 to 3 are, therefore, decided accordingly.

10. The result of the above discussion is that the appeal is allowed, impugned judgment, decree dated 10.1.1997 are set aside ,

the case is remanded to learned Lower Appellate Court with a direction to decide the issues of adverse possession and maintainability of the suit expeditiously and preferably by 30.6.2008 as the original suit was filed on 13.9.1988. The parties through their counsel are directed to appear before the learned lower Appellate Court on 17.1.2008. The Registry is directed to send the relevant record to lower Appellate Court immediately so as to reach before the date fixed.

(Kuldip Singh)
Judge.

December 24, 2007
(sks)